

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

KEITH SURTAIN

§

v.

§ CIVIL ACTION NO. 5:15cv2

REGINALDO STANLEY, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Keith Surtain, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named defendants are Dr. Reginaldo Stanley, Telford Unit practice manager Cathy McPeak, Warden Jeffrey Calfee, Warden Dawn Merchant, and Major Wade Alexander.

Plaintiff complained of difficulties in receiving his insulin while he was confined at the Telford Unit of the Texas Department of Criminal Justice, Correctional Institutions Division. Two separate motions to dismiss were filed, one by Dr. Stanley and Cathy McPeak and the other by Warden Calfee, Warden Merchant, and Major Alexander. On December 16, 2015, the Magistrate Judge issued a Report recommending the motions be granted and the lawsuit dismissed.

Plaintiff received a copy of this Report on December 19, 2015, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED the Report of the Magistrate Judge (docket no. 26) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED the motions to dismiss filed by the Defendants Dr. Stanley and Cathy McPeak (docket no. 16) and by Warden Merchant, Warden Calfee, and Major Alexander (docket no. 17) are **GRANTED** and the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief may be granted. It is further

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So ORDERED and SIGNED this 5th day of February, 2016.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE